

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Mirant Delta, LLC
Mirant Potrero, LLC

Docket No. ER04-227-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued October 28, 2004)

1. On August 23, 2004, Mirant Delta, LLC (Mirant Delta) and Mirant Potrero, LLC (Mirant Potrero) (collectively, Mirant) filed an offer of settlement in the above-referenced docket. Commission Trial Staff filed initial comments in support of the settlement. No other comments were filed. On September 28, 2004, the settlement judge certified the settlement agreement to the Commission as an uncontested offer of settlement.
2. The subject settlement agreement is in the public interest and is hereby approved. In addition, the rate schedule revisions submitted with the settlement agreement are in compliance with Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,096 (2000) and are accepted for filing as designated and made effective as specified in the settlement agreement. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
3. This order terminates Docket No. ER04-227-000.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

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KELLY, Commissioner, *dissenting in part*:

For the reasons I have previously set forth in *Wisconsin Power & Light Co.*, 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving settlement provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the “just and reasonable” standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

Therefore, I disagree with this order to the extent it approves a settlement that provides the standard of review for changes to the settlement proposed by “a non-party or the Commission acting *sua sponte* shall be the ‘public interest’ standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the ‘*Mobile-Sierra*’ doctrine).”

Suedeem G. Kelly